IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2070 of 2005

For Approval and Signature:
HON'BLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NANKUBHAI CHAPRAJBHAI KOTILA & 2 - Petitioner(s)

Versus

VAVADIA JINABHAI KALUBHAI & 10 - Respondent(s)

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Appearance :
MR. ASHISH DAGLI for MR YOGESH S LAKHANI for Petitioner No(s).: 1,2,3.

RULE SERVED for Respondent No(s).: 1, 2, 3, 4, 5, 6, 7, 8, 9,10.
- for Respondent No(s).:

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CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 21/07/2005

ORAL JUDGMENT

1.Instant petition under Article 227 of the Constitution

of India is filed against the order dated 1.12.2005 recorded below application exh.43 in Regular Civil Suit No. 29 of 2004 by the learned Joint Civil Judge (JD), Dhari, by which the application filed by the Vangadhra Gram Panchayat, Taluka Kahmbha, District Amreli to implead it as a Co-defendant No.11 in the Suit has been allowed and thereby Vangadhra Gram Panchayat is permitted to implead itself as Defendant No.11 in the Suit.

2. Having heard Mr. Ashish Dagli, learned advocate for the petitioner and Mr. P.J.Kanabar, learned advocate of respondent No.11 and on perusal of the impugned order, it is seen that the dispute between the parties is in relation to the Survey No. 182 situated in Village Vangadhra and as per the Mutation Entry No. 68, the said land is reserved as gaucher and therefore according to this Court, Vangadhra Gram Panchayat is not only a necessary but a proper party to adjudicate the question raised in the Suit.

3. Mr. Ashish Dagli, learned advocate of the petitioner is unable to point out as to what prejudice is going to cause to the petitioner by permitting the Vangadhra Gram Panchayat to implead it as Defendant No.11 in the Suit.

4. It may be noted that this is a petition filed under Articles 226/227 of the Constitution of India, but this Court treat this petition as field under Article 227 of the Constitution of India as the order impugned in the petition is interlocutory order.

5. In the case of Sadhana Lodh v/s National Insurance Company Ltd., (2003) 3 SCC 524, a Three Judge Bench of the Supreme Court has held that the petition would not

lie under Article 226 of the Constitution of India but the petition would lie under Article 227 of the Constitution of India against the interlocutory order passed by the trial Court.

6. In the case of Ouseph Mathai and others v/s. M.Abdul Khadir, (2002) 1 SCC 319, Supreme Court has held that the petition filed under Article 227 of the Constitution of India cannot be treated like an extension of a statutory appeal or revision.

7. It is settled principle of law that powers vested in Court under Article 227 of the Constitution of India is a supervisory jurisdiction. The High Court must confine itself to the correcting of error of jurisdiction committed by the Courts below and it cannot assume suo motu jurisdiction of appellate Court and correct every mistake assumed to have been committed by the Courts below. It is a review of the decision making process and not the decision itself. The High Court cannot reappreciate preliminary or perceptive facts found by the fact finding authority under the statute. The aforesaid proposition of law is laid down by the Apex Court in the case of (i) Mohd. Yunus v. Mohd. Mustaqim & others, AIR 1984 SC 38, (ii) Khanna Improvement Trust v. Land Acquisition Tribunal and others (1995) 2 SCC 557 and (iii) H.B.Gandhi v. M/s Gopinath, (1992) Supp. 2 SCC 312 (iv) State of Maharashtra v. Miland and others, (2000) 1 SCC 4.

8. In view of the aforesaid discussions and in view of the settled principles enunciated by the Supreme Court in above referred to judgements to the facts of the present case, this petition lacks merit and deserves to be rejected.

9. For the foregoing reasons, the petition fails and accordingly it is rejected with no order as to costs. Rule is discharged. Interim relief granted earlier stand vacated.

10. Registry to send the writ of this order to the learned Civil Judge (JD) Dhari, District Amreli forthwith.

(A.M.Kapadia,J)

Jayanti*